

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1. STUART C. IRBY COMPANY,

Plaintiff,

vs.

Civil Action No. 12-CV-617-CVE-FHM

1. WIRE NUTS ELECTRIC, INC.,
an Oklahoma corporation;

2. CHRISTY MCGILL;

3. WILLIAM SMITH; and

4. JANET SMITH,

Defendants.

COMPLAINT

Stuart C. Irby Company (“Irby”), the plaintiff, files this complaint against defendants, Wire Nuts Electric, Inc. (“Wire Nuts”), Christy McGill, William Smith, and Janet Smith.

PARTIES

1. Plaintiff Irby is a Mississippi corporation. Its principal place of business is located at 815 South State Street, Jackson, Mississippi.

2. Defendant Wire Nuts is an Oklahoma corporation. Its principal place of business is located at 1218 ½ 41st Street, Tulsa, Oklahoma.

3. Defendant Christy McGill is an adult who resides in Tulsa County, Oklahoma.

4. Defendant William Smith is an adult who resides in Tulsa County, Oklahoma.

5. Defendant Janet Smith is an adult who resides in Tulsa County, Oklahoma.

JURISDICTION

6. This Court has jurisdiction over this dispute under 28 U.S.C. § 1332. The matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

VENUE

7. Venue is proper in this judicial district under 28 U.S.C. § 1391 because all defendants are residents of Oklahoma and at least one of the defendants resides in this judicial district.

FACTS

8. On April 6, 2009, Wire Nuts completed an Application for Credit and Billing Information (the “Application”). A copy of the Application is attached to this complaint as Exhibit 1.

9. The Application provided that Wire Nuts completed the Application “as an inducement to ... Irby ... extending credit to the above-named Applicant.” *See* Exhibit 1.

10. Christy McGill (President), William Smith (Vice President), and Janet Smith (Chief Financial Officer), all signed the Application on behalf of Wire Nuts and as Wire Nuts’ guarantors. With regard to this guaranty, the Application provided that the guarantors “jointly and severally ... [and] unconditionally guarantee[d] to ... Irby ... the payment of all existing indebtedness of ... [Wire Nuts], together with any and all amounts that ... [Wire Nuts] shall at any future time owe to ... Irby” The Application also makes the guarantors liable for attorneys’ fees, costs and expenses incurred to collect any amounts owed to Irby. *See* Exhibit 1.

11. Irby sold certain materials to Wire Nuts by extending Wire Nuts credit under the Application. Wire Nuts' account with Irby became delinquent. The principal balance of the delinquent amounts is \$179,682.36 (the "Principal Balance"). A copy of the invoices (the "Invoices") reflecting the delinquent amounts is attached to this complaint as Exhibit 2.

12. The Invoices referred Wire Nuts to Irby's website for applicable terms and conditions of the sales. A copy of those terms and conditions, titled "Terms And Conditions Of Sale" ("Sales Terms"), is attached to this complaint as Exhibit 3.

13. The Sales Terms impose a 1.5% per month service charge on all delinquent amounts owed in connection with each invoice. The Sales Terms also make Wire Nuts liable for all attorneys' fees, costs and expenses Irby incurs to collect amounts Wire Nuts owes Irby. *See* Exhibit 3 ¶¶ 3 and 4.

14. Despite numerous demands for payment, the defendants have failed to pay the amounts that they owe Irby.

CLAIM

Breach of Contract and Guaranty Agreement

15. By not timely paying Irby for materials that Irby sold to Wire Nuts, the defendants have breached their agreement with Irby.

16. Under the terms of the Application, the Invoices and the Sales Terms, the defendants are liable for the Principal Balance, an additional 1.5% per month service charge on the Principal Balance that began to accrue when each component of the

Principal Balance became delinquent, and attorneys' fees, costs and expenses incurred to collect the amounts owed to Irby.

PRAYER

ACCORDINGLY, Irby respectfully requests that the Court enter a judgment against the defendants and in favor of Irby making the defendants jointly and severally liable for:

- (i) the Principal Balance of \$179,682.36;
- (ii) the 1.5% per month service charge on the Principal Balance accruing from the date each component of the Principal Balance became due until the Principal Balance is collected;
- (iii) pre- and post-judgment interest;
- (iv) the attorneys' fees, costs and expenses Irby incurs to collect the amounts owed to Irby; and
- (v) any further relief that the Court deems appropriate.

Dated: November 1, 2012.

Respectfully submitted,

s/ David Pomeroy

David Pomeroy, OBA No. 7209

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